

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MALIK AZ'REAL MOSBY,)	
)	
Plaintiff,)	Civil Action No. 9:06-CV-01165-
)	JMH
v.)	
)	
MARSHALL TRABOUT, et al.,)	
)	
Defendants.)	ORDER

** ** ** ** **

HOOD, J.

Plaintiff has filed a document which has been construed as a motion for default judgement pursuant to Fed. R. Civ. P. 55(b)(2) [Dkt. Nos. 93 and 98]. Defendant Marshall Trabout, M.D. has now moved the Court to set aside the default previously entered [Dkt. No. 105]. United States Magistrate Judge George H. Lowe to whom this matter has been referred for initial consideration has filed his Report and Recommendation [Dkt. No. 113] to which Plaintiff has filed objections [Dkt. No. 114]. Having considered the matter *de novo* in light of Plaintiff's objections, and being advised:

IT IS ORDERED herein as follows:

(1) that Defendant Trabout's motion to set aside the default [Dkt. No.105] be, and the same hereby is, **GRANTED** inasmuch as it is well-settled in the Second Circuit that defaults are not favored, and that there is a strong preference for resolving disputes on their merits. *Brien v. Kullman Indus., Inc.*, 71 F.3d 1073, 1077

(2d Cir. 1995).

(2) that Plaintiff's motion for default judgment [Dkt. Nos. 93 and 98] be, and the same hereby is, **DENIED AS MOOT**.

(3) that Plaintiff's motion for an order directing the United States Marshal to bring Defendant to court [Dkt. No. 101] be, and the same hereby is, **DENIED AS MOOT**.

This the 24th day of January, 2011.

Sitting by Designation



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge